

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

VICKTOR BERISHAJ	§	
REG. NO. 19561-068	§	
V.	§	C.A. NO. C-05-438
	§	
FEDERAL BUREAU OF PRISONS	§	

**OPINION AND ORDER RE-DESIGNATING HABEAS CORPUS PETITION  
AS A BIVENS COMPLAINT, AND ORDER TO PAY FILING FEE OR SUBMIT  
COMPLETED APPLICATION FOR LEAV TO PROCEED *IN FORMA PAUPERIS***

On August 26, 2005, Vicktor Berishaj, a federal prisoner formerly incarcerated at the Federal Correctional Institution (FCI) in Three Rivers, Texas, filed on a preprinted § 2241 habeas corpus form a complaint alleging that certain Bureau of Prison (BOP) officials at FCI-Three Rivers and in the Dallas Regional Office were deliberately indifferent to his serious medical needs because they failed to provide recommended treatment for his neck or schedule him to see a spine specialist (D.E. 1). Berishaj also claimed that the BOP had denied him medical care in retaliation for his filing grievances about his medical situation.

Berishaj is not challenging the fact or duration his confinement, but is complaining of the conditions of his confinement. Such claims are properly maintained in a civil rights action, not a habeas corpus proceeding. See Jackson v. Torres, 720 F.2d 877, 879 (5th Cir. 1983) (per curiam) (any challenge to the fact or duration of a prisoner's confinement is properly treated as a habeas corpus matter, whereas challenges to conditions of confinement may proceed under § 1983). Accordingly, the Clerk of the Court is instructed to re-designate this action as a civil rights action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999 (1971) ( Bivens action is the federal counterpart of § 1983 and "extends the protections afforded by § 1983 to parties injured by federal actors not liable under § 1983).

The filing fee for a civil rights action is \$250.00. The Prison Litigation Reform Act (PLRA) requires prisoners filing civil lawsuits to pay an initial partial filing fee and the balance of the full filing fee of \$250.00. The Clerk shall forward to plaintiff an application for leave to proceed *in forma pauperis*. Plaintiff is advised that, to continue with this action, he must either pay the \$250.00 filing fee in full, or must submit a completed application to proceed *in forma pauperis*, including a copy of his inmate trust fund account statement, if he is still incarcerated or under federal custody in a halfway house or other supervision. If plaintiff desires to pursue this civil rights action, the \$5.00 fee he previously paid to file the habeas corpus petition will be applied to the civil filing fee. If plaintiff does not desire to prosecute this action, he should return the attached voluntary dismissal form, and his \$5.00 will be refunded. Plaintiff shall comply with this order within thirty days. Failure to timely comply will result in dismissal of his action for want of prosecution. Fed. R. Civ. P. 41(b).

ORDERED this 15<sup>th</sup> day of September, 2005.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE

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**MOTION FOR VOLUNTARY DISMISSAL**

I, \_\_\_\_\_, plaintiff, seek voluntary dismissal under  
FED.R.CIV.P. 41(a) because I do not want to pay the filing fee in this case.

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Date